IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6289 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANIBEN WD/O MOHANBHAI HALABHAI PARMAR

Versus

MANSHUKHLAL JAISHANKAR DAVE

Appearance:

1. Special Civil Application No. 6289 of 2003

MR SK JHAVERI for Petitioner.

MR DK ACHARYA for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 15/07/2003

ORAL JUDGEMENT

The petitioners have filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the order dated 13.11.1995 passed by learned 3rd Joint Civil Judge (SD), Palanpur, in Application Exh. 5 in Regular Civil Suit No. 108 of 1994 and order dated 19.1.2002 passed by learned

Extra-Assistant Judge, Banaskantha District at Palanpur in Civil Misc. Application No. 11 of 1995. The petitioners have further prayed for direction to the Charity Commissioner and Deputy Charity Commissioner to hear and dispose of the Change Application No. 134 of 1994 within a stipulated time and to grant injunction restraining the respondents from any such act or conduct so as to interfere with the possession, management and enjoyment of their rights in respect of suit properties till final disposal of the proceedings in and arising out of Change Application No. 134 of 1994 before the Additional Charity Commissioner, Mehsana and continue to maintain status-quo as hitherto maintained. The petitioners have also prayed for an order suspending the operation of the order of the Deputy Collector, dated 8.1.1993 in Application No.3 of 1992 and the order dated 20th February 1995 passed by the Collector in Appeal No. 28 of 1998 and also sought for a direction to the State Government and Gujarat Revenue Tribunal to take into consideration the final decision in the proceedings in and arising out of the Change Application No. 134 of 1994. The petitioners have also prayed for the interim injunction restraining the respondents from doing any such act or conduct so as to interfere with the possession, management and enjoyment of their rights in respect of their suit properties till final disposal of the proceedings of Change Application No. 134 of 1994 and also praying for stay against other proceedings pending before the Gujarat Revenue Tribunal in TEN/AA/15 of 1995 till final disposal of the proceedings of Change Application No. 134 of 1994.

2. The brief facts, giving rise to the present petition, are that the petitioners are the legal heirs of the original-owner of the properties, which, inter alia, include property known as 'Kantharia Hanuman Mandir". The respondents No. 1 to 11 are the Trustees of Public Charitable Trust, known as "Palanpur Hindu Samaj Trust" who claimed that disputed properties are also the part of the properties of the Trust and has got them so registered with the Charity Commissioner.

3. It is the case of the petitioners that late Shri Mohanbhai Kalabhai Parmar, husband of petitioner No.1 and father of petitioners No. 2 to 5 and 7, had filed Regular Civil Suit No. 108 of 1994 praying inter alia that during the pendency and final disposal of the Change Application No. 134 of 1994 before the Assistant Charity Commissioner, Mehsana under Section 22A of the Bombay Public Trust Act, 1950 (hereinafter referred to as "the Act") and Revision Application No. 1 of 1988 under

Section 70-A of the Act, the defendants in the said suit be permanently restrained and/or injuncted from disturbing the possession, administration and other proprietory rights of the applicant in the suit property bearing Palanpur City Survey No. 9690 as described therein.

4. It is averred in the petition that the original-plaintiff claimed title to the suit property on the basis of documents as well as description. The original-plaintiff claimed right, title and ownership of the suit properties as legal heir of one Hala Ganesh Parmar who bought the said lands, Well and properties from one Fuliben, widow of Khushal Dola Parmar, the original-holder of half of 4.35 acres of lands of Survey No. 68 of Palanpur. The possession and enjoyment of the said lands and property since Samvat Year 1983 has been with Mali Hala Ganesh Parmar and after his death that of the original-plaintiff and after his death that of the petitioners as owners in possession of the said land and the said properties, built on portion of the said lands. It is further stated that Panipatrak of Survey No. 68/1 of Moje Palanpur was showing the name of Mali Hala Ganesh Parmar and later the original-plaintiff Mali Mohan Hala during the period from 1951 to 1976-77.

5. It is further averred in the petition that the Palanpur Hindu Samaj Trust came to be registered on 5.11.1952 as Public Charitable Trust and suit properties were noted as properties of the Trust behind the back and without the knowledge of the said Mali Hala Ganesh Parmar or the original-plaintiff. It is also stated that one Mr. AS Mehta on behalf of Palanpur Hindu Samaj Trust stated before City Survey Enquiry Officer on 3-7-1963 that the suit property belonged to Palanpur Hindu Samaj Trust. The original-plaintiff along with the co-owner, thereafter on 3-12-1963 stated before the City Survey Officer during the course of enquiry that they were the owners and in possession of land bearing Survey No. 68 for which they were also paying the land revenue to the Government. It is also stated in the petition that Palanpur entries of Survey No. 68/3 of Moje Palanpur reflected the lands admeasuring 13 gunthas in the name of the Government and the said entries were also challenged, being illegal and without any basis. It is further stated that one Mr. Kshiprgiri, the Pujari of Hindu Samaj Trust filed an Application on 3.8.1987 before the Mamlatdar requesting him to make the entry of other rights in respect of the suit properties, in Revenue records, namely Village Form No. 7/12. The Mamlatdar had allowed the said application and ordered to make an

Entry as other rights on 30.9.1987. This Entry was challenged by the Trustees of Palanpur Hindu Samaj Trust before the Deputy Collector, Palanpur, in RTS Appeal No. 10 of 1988 and the said Appeal was allowed by the Deputy Collector holding that the Mamlatdar had passed the order without notice of hearing to Palanpur Hindu Samaj Trust. It is further stated that one Mr. BT Rathod and the original-plaintiff filed an application being Revision Application No. 1 of 1988 before the Charity Commissioner, Ahmedabad under Section 70-A of the Act in 1988. The original-plaintiff had also filed an Application No. 3 of 1992 for verification of rights under Section 37(2) of Bombay Land Revenue Code before the Deputy Collector, Palanpur, which was rejected by him on 8-1-1993. Being aggrieved by the said order, the original-plaintiff preferred an Appeal No. 28 of 1993 before the Collector and the said Appeal was also dismissed by the Collector on 7.4.1995. The original-plaintiff, thereafter, challenged the said order before the Gujarat Revenue Tribunal in Revision Application No. TEN/AA/1995 and the said Application is pending before the Tribunal.

6. It is further stated that the original-plaintiff filed Change Application No. 134 of 1994 on 24.3.1994 before the Assistant Charity Commissioner, Mehsana under Section 22-A of the Act, praying, inter alia, that the suit property should be deleted as of the ownership of Palanpur Hindu Samaj Trust. It is further stated that since there was no power to issue any order of interim direction with the Charity Commissioner under the Act, the original-plaintiff filed Regular Civil Suit No. 108 of 1994 praying that during the pendency of Revision Application No. 1 of 1988 under Section 70A and Change Application No. 134 of 1994 under Section 22A, the management and administration of the suit lands and properties be not disturbed and status-quo be maintained in that regard. The Application, Exh.5 for interim injunction was decided on 13.11.1995 and the interim injunction originally granted was vacated. Being aggrieved by the said order, the original-plaintiff preferred Civil Misc. Application No. 116 of 1995 before the District Court, Banaskantha at Palanpur and the same was also dismissed by the learned Extra Assistant Judge, Banaskantha District, Palanpur on 19.1.2002. Being aggrieved by the said order, the present petitioners preferred Civil Revision Application No. 322 of 2002 before this Court and the said Revision Application was also rejected on 7.10.2002 on the ground that it was not maintainable. While rejecting the said Revision Application, this Court has however granted

permission to the petitioners to file Special Civil Application under Article 226/227 of the Constitution of India and the interim relief which was continued was extended for the period of 3 weeks from the date of the order. The said interim relief expired after the said period of three days. The present petition was filed by the petitioners on 29.10.2002, however there were some office objection, and hence the petition could not be moved for hearing. The objections were to be removed in March 2003 and thereafter the present petition was moved on 5.3.2003. The same was initially adjourned to 24.6.2003 and thereafter it is placed for hearing on 8.7.2003.

7. Heard Mr. SK Zaveri, learned Senior Advocate appearing for the petitioners and Mr. DK Acharya, learned advocate appearing, on Caveat, on behalf of the respondents. Mr. Zaveri has submitted that both the Courts below have overlooked the fact that the authorities under the Act have no power to grant injunction pending application under Sec. 22A of the Act and hence the only remedy available to maintain status-quo was to institute a suit for permanent injunction. He has therefore submitted that the Courts below have committed a grave error in refusing to exercise jurisdiction resulting into miscarriage of justice and the orders are therefore in violation of Articles 14 and 21 of the Constitution of India. Mr. Zaveri has further submitted that both the Courts have overlooked the fact that Palanpur Hindu Samaj Trust has not been able to produce a single document of its ownership or possession except an entry from Bombay Public Trust Register. He has further submitted that the said Entry was not made by holding any inquiry or by issuing any notice to the original-plaintiff who was the owner and in possession, management and enjoyment of the suit properties, but merely because it was so mentioned in the application for registration of a Trust the said entry was made. He has further submitted that both the courts below failed to appreciate that the original-plaintiff was bonafide pursuing his remedy with sufficient foundation of his claim both on the basis of Revenue record and by continuous possession and enjoyment thereof, right from the date of its purchase from Fuliben. He has further submitted that both the courts below have erred in overlooking the claim of the original-plaintiff duly supported by the documents and the prescription and the de facto possession of the original-plaintiff emerging from the said record as opposed to the alleged possession of the Trust. He has further submitted that the courts below grievously erred

in assuming so-called legal possession imputing ownership merely because the said Trust got the suit properties included in the properties of the Trust by mentioning them as the properties of the Trust. He has further submitted that the original-plaintiff has produced the specific materials and the matter is to be investigated under Section 22-A of the Act and till the said proceedings are finalised, the possession of the present petitioners is required to be protected. Mr. Zaveri has further submitted that both the courts below have equally erred in being unduly influenced by the previous litigation between the respondents and Kshiprgiri Maharaj. He has further submitted that while the courts, being carried away in these proceedings, failed to appreciate that the original-plaintiff was not the party in any of those proceedings, resulting into gross miscarriage of justice and erred in not considering that the original-plaintiff deliberately was not made a party with ulterior motive. In this connection, he has invited the attention of this Court to an order passed below Exh. 60 in the said Suit exposing the evil intention of the respondents.

8. Mr. Zaveri has further submitted that the courts below have also erred in being influenced by the proceedings u/s. 37(2) of the Bombay Land Revenue Code which were initiated by original-plaintiff, vide his Application No. 3 of 1992. In this connection, he has submitted that the Deputy Collector rejected the Application vide his order dated 8-1-1993 which was challenged in land dispute application No. 28 of 1993 before the Collector and against the order passed by the Collector dated 20th February 1995, the original-plaintiff had preferred an appeal before the Gujarat Land Revenue Tribunal which was admitted on 7.4.1995 and is now pending for adjudication. He has further submitted that the rival claim of the State also is suggestive of the fact that there are in fact 3 claimants of the suit property and unless and until these disputes are resolved by the Charity Commissioner under Sec. 22A in Change Application No. 134 of 1994, the possession of the present petitioners is required to be protected.

9. Mr. Zaveri has further submitted that the courts below have failed to appreciate the objective reasons for insertion of Sec. 22A in the Act by way of subsequent amendment in 1954. The Courts failed to consider that the appeals and petitions were available only to the persons who are parties to the original proceedings before the Deputy Charity Commissioner. He has submitted

that the only remedy, to a third party whose rights are affected by the order of the Deputy Charity Commissioner under Sections 19 to 21 of the Act, is to apply for further inquiry under Sec. 22-A of the Act and not under Sec. 70-A of the Act. He has therefore submitted that the inquiry under Sec. 22A entitles a third party to bring material particulars not inquired into in earlier proceedings under Sections 19 to 21 and hence the decision such as in Revision Application No. 1 of 1988 does not prevent or preclude the petitioners from pursuing the remedy under Sec. 22A and the Deputy Charity Commissioner from reexamining his earlier order or finding. He has therefore submitted that the suit filed and interim injunction prayed for by the original-plaintiff was well-founded and by refusing the said interim relief, the lower courts failed to exercise jurisdiction vested in them which is in violation of Articles 14, 21 and 300A of the Constitution of India.

10. Mr. Zaveri has further submitted that the courts below have failed to exercise jurisdiction vested in them even from another angle and submitted that neither under Sec. 79 nor 80 of the Act, institution of such a suit is barred. On the contrary, the Civil Court is required to entertain and try such a suit under Sec. 9 of the Code of Civil Procedure and is empowered to grant injunction under clause (c) and (d) of sub-section (3) of Section 38 of Specific Relief Act. He has submitted that the extent to which the jurisdiction of the Civil Court is barred under the Act, the remedy is being pursued by filing Change Application under Sec. 22A of the Act and in the absence of the power with the charity organisation, the suit filed before the Civil Court is the proper remedy. He has, therefore, submitted that there is a prima facie case in favour of the petitioners and there are triable issues, substantial questions of law and facts and existence of serious disputes requiring a full-fledged trial. He has therefore submitted that the orders passed by both the courts below are required to be quashed and set aside and the petition be allowed with costs.

11. In support of his submissions, Mr. Zaveri has relied on the decision of this Court in the case of Kuberbhai Shivdas And Another v. Mahant Purshottamdas Kalyandas And Others - (1961) 2 GLR 564, wherein it is held as under :

> "Though retaining the final and conclusive character of the finding and entries made by the Deputy or Assistant Charity Commissioner, under

sec. 20 and 21 of the Bombay Public Trusts Act, sections 22 and 22A make provisions for changes to be made when such changes appear to be necessary either as a result of a change having occurred subsequent to the date of the entries or as a result of some particulars having been left out for consideration in the previous inquiry."

Mr. Zaveri has further relied on the decision of this Court in the case of Gordhanbhai Chhotabhai Patel v. Ramji Mandir, Ahmedabad Trust (By its Vahivatkarta Mahant Ayodhyaprasad Guru Purshottamdas) - (1975) 16 GLR 1009 for the proposition that the Civil Court's jurisdiction is not ousted from granting interim injunction even when the proceedings are pending before the other authorities. While dealing with the issue regarding the Mamlatdar's power under Section 70(nb) of Bombay Tenancy & Agricultural Lands Act, the Court has held as under :

"The addition of clause (nb) in sec. 70 by the Bombay Tenancy & Agricultural Lands Act (V of 1973) is made only with a view to empower the Mamlatdar in a proceeding taken out under the provisions of the Act to grant such temporary injunction. Before the amendment he had no such justification or power. By the insertion of this clause, the Mamlatdar is given supplementary power in a proceeding under the Act for the purposes of the Act to grant such temporary injunction."

12. Mr. Zaveri has further relied on the decision of this Court in the case of A.C. Joshi, City Deputy Collector, Ahmedabad v. Shukla Ramanujacharya And Anr. (1976) 17 GLR 529, for the proposition that even when subject matter of public trust already inquired into under Section 19 of the Act, if some particulars are remained to be inquired, fresh inquiry can be made under Section 22A of the Act. In this connection, this Court has held as under :

"Sec.22A of the Bombay Public Trust Act obviously contemplates a fresh inquiry in cases where "any particular" relating to any public trust, which was not the subject matter of an inquiry under sec. 19, has remained to be inquired into. In other words, the section has application to the cases where even though

> inquiry under sec. 19 has been made, some particulars relating to a public trust remained to be inquired into in an inquiry conducted under sec. 19. If a reference is made to sec. 19 it will be found that it, inter alia, contemplates an inquiry for the purpose of ascertaining (i) Whether any property is the property of such trust; and (ii) any other particulars as may be prescribed under sec. 18(5). Looking to these provisions of sec. 19 it is obvious that the question whether any property is the property of a particular trust is one of the questions which is required to be inquired during the course of the inquiry contemplated by him."

13. Mr. DK Acharya, learned advocate appearing on Caveat on behalf of the respondent, on the other hand, has strongly supported the orders passed by both the courts below. He has submitted that filing of suit before the Civil Court and pursuing the said remedy all throughout is nothing but the abuse of process of law. The petitioners have virtually lost on all fronts and still the petitioners are pursuing the present proceedings and unnecessarily dragging the respondents into such long-drawn litigations. He has invited my attention to the Plaint of Regular Civil Suit No. 108 of 1994 wherein the original-plaintiff had himself stated that the description of the properties registered with the charity organisation is so incomplete, ambiguous and uncertain that it is difficult to say that it is in respect of the temple and dharmashala situated in the portion of the property of Survey No. 68 of Palanpur, allotted to the plaintiff. It, therefore, clearly indicates that the original-plaintiff was not sure as to whether he is the owner of the said temple and dharmashala. He has further invited my attention to Pages 155-156 of the Paper Book. Page 155 is the copy of Sanad issued by the Government of Mumbai State wherein the Kantharia Hanuman Mandir is shown as the property of Palanpur Hindu Samaj. Page 156 is the Extract from the Register of Property Cards wherein also the name of Palanpur Hindu Samaj is mentioned as the owner of Kantharia Hanuman Temple. Mr. Acharya has further drawn my attention to Pages 226 to 235 of the Paper Book which are the copies of the Pay Bills wherein the name of Kshiprgiri is mentioned as "Pujari" of Kantharia Hanuman Temple and it is also shown that he has drawn the salary and signed the said Pay Bill against his name. He has further submitted that the proceedings which were initiated against Kshiprgiri by filing Civil Suit in

Civil Court, had finalised upto High Court and the pleas against the said Kshiprgiri were accepted by the High Court. Even s applplication with regard to the other rights in the suit property was not rightly entertained by the Deputy Collector. Mr. Acharya has further submitted that the Revision Application No. 1 of 1988 was rejected on 16th June 1995. The petitioners have made the prayer in the Regular Civil Suit No. 108 of 1994 that the original-plaintiffs' possession should be protected till the decision of the Revision Application No. 1 of 1988 and Change Application No. 134 of 1994. While disposing of the said Revision Application, the Court has specifically held that Palanpur Hindu Samaj is the owner of Kantharia Hanuman Temple and that Kshiprgiri or any other person has no right, title or interest so far as the said temple is concerned. Mr. Acharya has also referred to and relied on the land revenue proceedings which were also decided against the present petitioners. He has further submitted that during the course of inquiry under Sec. 19, the name of Palanpur Hindu Samaj was registered qua the suit property and the same cannot be now altered simply because the original-plaintiff has filed the Change Application before the Charity Commissioner. He has further submitted that after the filing of the Change Application before the Charity Commissioner no further progress has been made and the present petitioners have not made any attempt to get the early disposal of the said application and on the contrary bypassing the legal process, the petitioners have been pursuing the present proceedings seeking direction against the possession for which they are not otherwise entitled. He has also submitted that the main suit is still pending before the Civil Court and there is concurrent finding of both the courts below which cannot be interfered with by this Court while exercising powers under Article 226/227 of the Constitution.

14. In support of his submissions, he has relied on the decision of Bombay High Court in the case of Taraben Baldevdas Parikh v. Charity Commissioner - AIR 1957 Bombay 42, wherein it is held that "Jurisdiction of great amplitude having been conferred under the Act upon the Deputy or Assistant Charity Commissioner or the Charity Commissioner to decide questions set out in S. 19 and jurisdiction of the civil Courts having been simultaneously excluded, it would be difficult to hold that the civil Court has jurisdiction to decide the same questions over again in a civil suit. The exclusion of jurisdiction of the civil Court is however made subject to any provision expressly made, and S. 50 being such a

provision, jurisdiction of the civil Court to entertain suits which fall within the description of suits mentioned therein may not be regarded as excluded". It is further held that "the order passed by the Deputy Charity Commissioner holding that the Civil Court had no jurisdiction to decide the question whether the amount in the hands of the trustees was the property of the Public Trust and the application before him under S. 19 could not be stayed was correct."

15. Mr. Acharya has further relied on the decision of this Court in the case of Bhupendra Rasiklal Kapadia v. Jayantilal Vrajlal Shah - 1982 GLH 1055, wherein it is held that "Once a finding about a particular property being the property of the public trust is reached and an entry is made pursuant thereto in the register kept under Section 19 of the Act, the said entry becomes conclusive, unless it is varied by the subsequent order under Sec. 22A of the Act.

16. As far as this Court's jurisdiction under Art. 227 of the Constitution of India to interfere with the orders passed by the courts below are concerned, Mr. Acharya has relied on the decision of the Hon'ble Supreme Court in the case of Sadhna Lodh v. National Insurance Co. Ltd. And Another - (2003) 3 SCC 524, wherein it is held that, "The Supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or a tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision."

17. Mr. Acharya has further relied on the decision of this Court in the case of Goswami Kalyanraiji Govindraiji v. Goswami Vallabhraiji Govindraiji - 2003 (2) GLH 24, wherein it is held as under :

> "It is settled principle of law that concurrent finding of facts recorded by both the courts below cannot be assailed in a petition filed under Art. 227 of the Constitution of India since the powers vested in Court under Art. 227 of the Constitution of India is a supervisory

> jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the courts below and it cannot assume suo motu jurisdiction of Appellate Court and correct every mistake assumed to have been committed by the courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex Court in Moh. Yunus' case (supra) and (i) Khanna Improvement Trust v. Land Acquisition Tribunal and others (1995) 2 SCC 557, (ii) H.B. Gandhi v. M/s. Gopinath (1992) Supp. 2 SCC 312 and State of Maharashtra v. Milind and others. (2000) 1 SCC 4."

18. I have heard the learned Senior Advocate, Mr. SK Zaveri appearing for the petitioners and Mr. DK Acharya, the learned advocate appearing for the respondents. I have also gone through the memo of the petition and the documents attached therewith. I have perused the file containing the papers produced before the courts below. This file is placed on the record of this court by Mr. Acharya. From perusal of the record, it appears to this Court that the case on hand has its own chequered history. The dispute appeared to have been started when the properties in question were shown and registered as the properties of Palanpur Hindu Samaj Trust in the record of Charity Commissioner, on 5.11.1952. Even before the City Survey Enquiry Officer, the properties were stated to be the properties of Palanpur Hindu Samaj Trust. Though the Mamlatdar allowed an application made by one Kshiprgiri, the Pujari requesting him to make an entry of other rights in revenue records, the said order of the Mamlatdar was reversed by the Deputy Collector, Palanpur, in RTS Appeal No. 10 of 1988 filed by the Trustees of Palanpur Hindu Samaj Trust. Not only this, while deciding application Exh. 5 in Regular Civil Suit No. 304 of 1986 filed by the Trustees of Palanpur Hindu Samaj Trust, before the Civil Judge (SD), Palanpur, against Shri Kshiprgiri, the Court, vide its order dated 20.8.1987, restrained him from interfering with the performance of Seva Puja by the Pujari of the Trust and also restrained him regarding the income and administration of the temple of Kantharia Hanuman and further restrained him from staying in the temple or from using the temple for the purpose of residence. In an appeal filed against this order by the said Shri Kshiprgiri, before the Extra Assistant Judge, Banaskantha

District at Palanpur, the learned Judge has held, vide his order dated 31.1.1992 that Kantharia Hanuman Temple, Dharmashala and other properties in the vicinity of the temple are the properties of the Palanpur Hindu Samaj Trust and the said Shri Kshiprgiri has nothing to do with the management of the Kantharia Hanuman temple. The said appeal was accordingly dismissed. This matter was carried further by the said Shri Kshiprgiri before this Court in C.R.A. No. 196 of 1992 and while deciding it, this Court, in its order dated 31.3.1994 held that in view of the decision of the Hon'ble Supreme Court in the case of The Managing Director, Hindustan Aeronautics Limited, Hyderabad vs. Ajit Prasad Terway Manager (Purchase and Stores), Hindustan Aeronautics Limited, Hyderabad - AIR 1973 SC 76, there was no reason to interfere with the order passed by the trial Court and confirmed by the Appellate Court.

19. The record further reveals that the original-plaintiff filed an application No. 3 of 1992 for verification of rights under Section 37(2) of the Bombay Land Revenue Code, on 6.4.92 and while deciding the said application, vide order dated 5.1.93, the Deputy Collector, Palanpur had held that the land bearing Survey No. 68/3 is known as Hanuman Temple and it is used for public purpose and there was no evidence to show that the said land is of the private ownership of the applicant. An appeal was filed against this order before the Collector, Banaskantha at Palanpur, being Appeal No. 28 of 1993 and while deciding the said Appeal, the Collector, Banaskantha, has vide his order dated 20.2.95 confirmed the order passed by the Dy. Collector by holding that there was no evidence to prove that the disputed land belonged to the appellant. A revision filed against this order, being Revision Application No. 15 of 1995 before the Gujarat Revenue Tribunal is still pending.

20. The record further reveals that the original-plaintiff has filed Revision Application No. 1 of 1998 before the Charity Commissioner, Ahmedabad, against the Trustees of Palanpur Hindu Samaj Trust, praying, inter alia, for quashing and setting aside the order passed by Deputy Charity Commissioner on 5.11.1952 in Application No. 1216 of 1952. While disposing of the said application, the Charity Commissioner, in his order dated 16.6.95 has held that in City Survey record the ownership rights of the properties in question are shown as of Palanpur Hindu Samaj. The Sanad issued by the Government of Mumbai State, in respect of the said property shows the name of Palanpur Hindu Samaj and Sanad

is the conclusive evidence of proving title to the property. The Property Card issued on the basis of this Sanad also shows the name of Palanpur Hindu Samaj. The Charity Commissioner has,therefore, come to the conclusion that Palanpur Hindu Samaj Trust is the owner of the Kantharia Hanuman Temple property and that Kshiprgiri or any other person has no right, title or interest in the said property. The Charity Commissioner has rejected the said Revision Application No. 1 of 1988.

21. In the above background of the case, the orders passed by the ld. Civil Judge (SD), Palanpur, below Application Exh. 5 in Regular Civil Suit No. 108 of 1994 on 13.11.1995 and confirmed by the ld. Extra Assistant Judge, Banaskantha District, Palanpur in C.M.A. No. 116 of 1995 on 19.1.2002 are to be examined and their legality, validity and propriety are to be decided. Since the Regular Civil Suit is still pending before the Court of Civil Judge (SD), Palanpur, this Court restrains itself from making any observation on the merits of the matter as it would adversely affect the interests of either of the parties. Even if it is assumed that the Charity Commissioner has no power to grant order of status-quo till the Change Application No. 134 of 1994 is decided and on that ground the original-plaintiff may be held to be justified in filing the Regular Civil Suit No. 108 of 1994, the fact still remains that the Courts below have not committed any error, much less any jurisdictional error in not granting order of status-quo in favour of the original-plaintiff. Since there is concurrent finding of both the courts below, in view of the decision of the Hon'ble Supreme Court in Hindustan Aeronautics Limited's case (supra), this Court does not think it fit and proper to exercise its extraordinary writ jurisdiction under Article 227 of the Constitution of India. This view is further fortified by the decision of the Hon'ble Supreme Court in the case of Sadhana Lodh v. National Insurance Co. Ltd and Another (Supra), wherein, as referred to earlier, conditions for maintainability of the petition under Article 227 of the Constitution are restated and powers of the High Court and purpose thereof, are succinctly explained. This Court (Coram: A.M. Kapadia, J.) has also very recently reiterated these well established principles in the case of Goswami Kalyanraiji Govindraiji (Supra).

22. In view of the above factual background and settled legal position, this Court refuses to interfere in the impugned orders passed by the Courts below. The petition, therefore, fails. Since no notice is issued by

this Court and Mr. Acharya appears on Caveat, there is no question of discharging notice. The petition is, accordingly, dismissed without any order as to costs.

23. Before parting, the Court, however, expects and directs the Additional Charity Commissioner, Mehsana to decide Change Application No. 134 of 1994 pending before him, as expeditiously as possible.

rmr. [K.A. Puj, J.]